



## **DEPARTMENT OF AGRICULTURE**

### **Rural Business-Cooperative Service**

#### **7 CFR Part 4274**

**[Docket No. RBS-20-BUSINESS-0032]**

**RIN: 0570-AA99**

### **Intermediary Relending Program (IRP) Program**

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Business-Cooperative Service (RBCS), (Agency), is completing a revision to the Intermediary Relending Program (IRP) regulations to streamline process, provide clarity on the daily administration of the program, and incorporate program updates. The regulatory cleanup incorporates the program statutory requirements established in the Agriculture Improvement Act of 2018 (Farm Bill).

**DATES:** This final rule is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Sami Zarour, Supervisory Business Loan and Grant Analyst, Program Management Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3226, 1400 Independence Avenue, SW, Washington, DC 20250-3226; e-mail: [Sami.Zarour@usda.gov](mailto:Sami.Zarour@usda.gov); telephone (202) 720-1400.

### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

The Intermediary Relending Program (IRP), originally enacted under 42 U.S.C. 9812 and currently authorized at 7 U.S.C. 1936b, authorizes the Secretary to make or guarantee low-interest loans to local intermediaries to relend funds to businesses to

improve economic conditions and create jobs in rural communities. The purpose of the IRP is to alleviate poverty and increase economic activity and employment in rural communities, especially disadvantaged and remote communities, through financing targeted towards smaller and emerging businesses, in partnership with other public and private resources, and in accordance with State and regional strategy, based on identified community needs. This purpose is achieved through loans made to intermediaries that provide loans to ultimate recipients to promote community development, establish new businesses, establish and support microlending programs and create or retain employment opportunities in predominantly rural areas. The regulations set forth the criteria the Agency uses via a point system to determine an eligible applicant's priority for available loan funds.

Since the enactment of the authorizing legislation, the passage of the Agriculture Improvement Act of 2018 (Farm Bill) has necessitated specific changes to this regulation. The Agency is also, through this rulemaking, improving processes, streamlining requirements, and providing clarity to daily administration of the program.

## **II. Summary of Changes**

### **Farm Bill Specific Updates**

The Farm Bill resulted in specific modifications to three topics: limitation on loan amounts, evaluation, and return of equity (42 U.S.C. 9812).

The limitation on loan amounts for ultimate recipient projects, including unpaid balance of any existing loans, is modified to allow a maximum loan to an ultimate recipient in the lesser of \$400,000 or 50 percent of the loan to the intermediary. In assigning priorities to applications, the Agency now requires an eligible entity to demonstrate that it has a governing or advisory board made up of business, civic and community leaders who are representative of the communities of the service area, without limitation to the size of the service area. Prior versions of the IRP limited

intermediary service areas to no more than 14 counties in order to receive points under this criterion. The Agency eliminated the reference to the 14-county service area to be consistent with the Farm Bill provision.

The Agency establishes a schedule that is consistent with the amortization schedules of the portfolio of loans made or guaranteed under the general requirements of the IRP, for the return of any equity contribution made under the program by an eligible entity that is current on all principal and interest payments and in compliance with the loan covenants. An intermediary with an IRP loan(s) where the cash portion of the IRP revolving loan fund includes fees, principal and interest payments received from the ultimate recipients and is not composed of any original Agency IRP loan funds may request a partial or full return of its contributed equity under the conditions outlined in the subpart: 1) the intermediary is current in all payments to the Agency and in compliance with all elements of their loan agreement and Agency reporting requirements; 2) the ratio of intermediary equity to the Agency loan after the return of equity remains consistent with the initial equity injection percentage by the intermediary; and 3) any return of an intermediary's equity from the revolving loan fund must be approved by the Agency in writing and is also limited to an amount that the Agency determines will not cause additional credit risk to the revolving loan fund.

#### *Across the regulation updates*

The entire regulation was updated to make it easier to understand and more streamlined. Throughout this document, the Farm Bill changes are enacted, and minor edits were made that were not intended to change the meaning of the regulation, just to make it clearer, provide more clarification to the public, streamline the regulation, and make it easier for the public to understand. This includes deleting repetitive, unnecessary phrases; breaking up confusing, long sentences and paragraphs into small segments to be more easily understood; and re-organizing the document to make it flow and read more

cleanly. This was done throughout the whole regulation.

*Introduction (§ 4274.301)*

The changes in this regulation revision include an introductory section for loans made by the Agency to eligible intermediaries. This applies to borrowers, ultimate recipients, and other involved parties. Any complete applications that have been received but not funded, or funded applications where the loan has not yet been closed by the effective date of this regulation, will be processed under these new requirements. An intermediary borrower may use the Agency-prescribed self-election template for the Intermediary Relending Program (IRP), to have its existing loans (projects already approved and closed) and any loans approved under the previous regulation but not yet closed processed under these provisions. Other edits in this section were made to provide necessary clarification.

*Definitions (§ 4274.302)*

The Definitions section, § 4274.302, has been updated for a variety of reasons, including to be consistent with the Farm Bill, other Agency regulations, and provide needed clarity.

*Administrator* has been added to be consistent with other Agency regulations. *Agency* has been edited to be consistent with other Agency regulations. *Affiliate* has been updated and expanded to be consistent with other Agency regulations, specifically the OneRD Guarantee Loan Initiative, and clarify factors that will be used in determining whether affiliation exists. *Agency IRP loan* was added to distinguish between Agency loans and the existing term *Agency IRP loan funds* and also to distinguish the Agency's loan from an Intermediary's loan to an ultimate recipient. *Agricultural production* was changed to be consistent with other Agency regulations, specifically the OneRD Guarantee Loan Initiative. *Aquaculture* was added to the regulation to be consistent with other Agency programs, and to match the Value-Added Producer Grants definition.

*Citizenship* has been changed to ‘*Citizen*’ to simplify the definition. *Community development* was added to add context to references relating to program purpose and scoring. The Farm Bill clearly indicates it is an eligible purpose, so this was added for clarity. *Conflict of interest* was updated for consistency with other Agency programs and to add context to its reference in other parts of the regulation. *Cooperative* was added to eliminate confusion and establish consistency in its application when determining eligibility of applicable entities. *Hydroponics* was added to define it as an eligible use of funds and to distinguish it from agriculture production. This has been found to be a popular trend in the country and warranted some clarification. *Immediate family* was added to provide readers a list of relationships that constitute immediate family members to assist in determining if a conflict of interest exists when employing parties of an organization that may have a financial interest or tangible personal benefit in a business transaction. This definition is also consistent across other Business and Industry programs, and the OneRD Guarantee Loan Initiative program. *Indian tribe* was added to eliminate confusion and establish consistency in its application when determining eligibility of applicable entities. *Intermediary* was changed to add the common purpose of recapitalizing a revolving loan fund. *Intermediary equity contribution* was added to provide context to the use of the term under priority scoring of projects. *IRP revolving loan fund* was updated to provide clarity regarding the creation of the fund and the segregation of the account from other funds. *Loan Agreement* was added to define it as a debt instrument that acts as an agreement between an intermediary borrower and the Agency setting forth terms and conditions of the Agency IRP Loan. *Military personnel* was added to provide clarification to the term for eligibility purposes and to codify information that was previously addressed through Administrative Notices. *Public agency* was added to eliminate confusion and establish consistency in its application when determining eligibility of applicable entities. *Revolved funds* was updated for

clarity. The term “rural and rural area” was updated to be consistent with the Farm Bill. This will eliminate confusion and ensure consistency in application of the term throughout the Agency field offices and users of the regulation. *Statewide nonmetropolitan median household income* was deleted as it is not used in the regulation. *Processing office or officer* was deleted because this term is no longer used in the regulation. *Technical assistance* was updated to provide additional information on what constitutes technical assistance and to whom the assistance is provided. *Underrepresented group* was updated to provide examples of common demographic characteristics. *Value-added agricultural product* was added to provide consistency to other Agency programs, specifically the OneRD Guarantee Loan Initiative. *Work plan* was added to define the information components as the document is a required part of a complete application. *Initial Agency IRP loan* and *Subsequent IRP loan* were removed from the definitions as their use was causing confusion and a misconception as it relates to revolved funds and continuing compliance with program regulations. Also, there has been confusion regarding the continuance of the Federal character of funds once the funds revolved and projects were no longer funded from the *Initial Agency IRP loan*.

The regulations repeated definitions throughout, and duplications were removed to avoid confusion. For example, § 4274.310(a) and (f) removed duplicate definitions of public agency, Indian Tribe, cooperative, and citizens. Section 4271.311(c) was also edited to avoid duplicating and confusing the definition of citizens.

*Review or Appeal Rights (§ 4274.303, formerly § 4274.373)*

Discussion on Appeal Rights has been moved from the former § 4274.373 to § 4274.303. Section 4274.303 was previously a reserved section. A description was added to clarify what appeal and review rights intermediaries have with respect to adverse Agency decisions, in accordance with 7 CFR Part 11.

*Exception Authority (§ 4274.304, formerly § 4274.381)*

Discussion on Exception Authority was moved from the former § 4274.381 to § 4274.304. This section was revised to clarify that the Agency is authorized to exercise Exception Authority when use of such authority is in the best financial interest of the Federal Government and is not contrary to any applicable statutory authorities.

*Other Regulatory Requirements (§ 4274.305, formerly reserved)*

The current rule is being updated to incorporate specific requirements of the applicable Rural Development environmental regulation, 7 CFR part 1970, “Environmental Policies and Procedures.” In accordance with 7 CFR part 1970, intermediary lending is considered a Multi-Tier Action and all intermediaries must execute an Exhibit H to RD Instruction 1970-A, “Multi-tier Action Environmental Compliance Agreement” as part of their IRP application submitted to the Agency. In accordance with 7 CFR 1970.55, the intermediary must sign a certification that they have a National Environmental Policy Act (NEPA) staff capable of undertaking an environmental review that meets Agency standards. For intermediaries that do not have capable staff, the Agency has decided that State RBCS Program staff will deliver training to borrowers on the environmental process and how to determine whether a project is a categorical exclusion or requires an environmental assessment and review. Agency RBCS Program staff can also opt to assist with completing the NEPA categorical exclusion review with information provided by the intermediary or ultimate recipient.

In the case of each proposed loan from an intermediary to an ultimate recipient using Agency IRP loan funds, an environmental review will be completed in accordance with 7 CFR 1970.53 and 1970.54. This promulgation will also address whether a project funded from revolved program dollars is subject to NEPA requirements. Projects that do not qualify for a categorical exclusion, or which may be subject to an extraordinary circumstance under 7 CFR 1970.52, will be referred to the Agency for review under 7

CFR part 1970, subpart C.

Requirements for seismic safety of new building construction were revised to reference updated provisions of the most current version of the International Building Code (IBC) or two versions prior; currently that is 2021 IBC, 2018 IBC or 2015 IBC, or an above-code seismic standard that meets or exceeds the equivalent level of safety to that contained in the latest edition of the National Earthquake Hazard Reduction Programs (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Building (NEHRP Provisions).

*Eligibility Requirements – Intermediaries (§ 4274.310, formerly § 4274.307)*

Section 4274.310 contains eligibility requirements for intermediaries. This section was in the former regulation at § 4274.307 and it was revised to provide clarity on process. It was updated to segregate lengthy paragraphs into smaller sections for clarity and ease of understanding. The term project completion was dropped and instead continuation was used as a more accurate and clear term. As most funds go on in perpetuity, it was the more appropriate term to use. Clarification was added under Section 4274.310(b) to state that if the intermediary is an affiliate of another entity, the intermediary's governing board must be independent of the affiliated entity. Section 4274.310(d) was expanded to clarify that the essential activities of a business lending operation and the administration of the IRP revolving loan fund must be conducted in-house by an employee of the intermediary; they may not routinely use outside entities for their lending outreach, loan underwriting, management, or day-to-day operations. Section 4274.310(j) was added to prohibit intermediaries that may be established for the purpose of, or that predominantly use IRP loan funds for, the financial benefit of an affiliate through loan participations or other funding methods.

*Eligibility Requirements - Ultimate Recipients (§ 4272.311, formerly § 4274.308)*

Section 4274.311 contains eligibility criteria for Ultimate Recipients and was



moved from its location in the previous regulation at § 4274.308. This section was revised to provide clarity, but no substantive changes were made.

*Loan Purposes (§ 4274.320, formerly § 4274.314)*

Eligible Loan Purposes are now outlined in the new § 4274.320 and were located in § 4274.314 in the previous regulation. Paragraph (a) has been updated to provide a better explanation of intermediary responsibilities regarding Agency IRP loans.

Aquaculture and hydroponics, commercial fishing, commercial nurseries, forestry, and value-added production will continue to be eligible loan purposes, but to minimize confusion, they have now been explicitly listed. In order to provide the necessary clarity for housing projects in the program, eligible use of funds for housing projects was better defined as limited to costs related to community development projects, and not for the purchase of residential housing. Additional IRP revolving loan fund purposes were included as appropriate. Section 4274.320(c) was expanded to clarify the use of loan participations as an eligible loan purpose, including provisions that must be included in a loan participation agreement between lenders while also prohibiting the use of an open-ended participation agreement between the intermediary and any lender. A provision was also added that no more than 50 percent of the total intermediary loans to ultimate recipients may be sold or participated to an individual lender or affiliation of lenders.

*Ineligible loan purposes (§ 4274.321, formerly § 4274.319)*

Ineligible loan purposes are outlined in § 4274.321 and were formerly found in the prior regulation at § 4274.319. In addition to reorganization, this section now has been updated to include additional information on conflict of interest prohibitions for clarification, agricultural production was modified to reference the now eligible activities in § 4274.320(b)(15) through (19), and the Agency has increased the threshold for ineligibility due to annual gross revenue derived from gambling activities from 10 to 15 percent, as recent industry trends show an increase in revenue from gambling activities,

including lease income from space or machines.

*Agency IRP Loan Conditions and Terms (§ 4274.330, formerly § 4274.320)*

Information about Loan Terms is now included in § 4274.330, moved from the former location of § 4274.320 in the previous regulation. In § 4274.330(b), loan closing between the intermediary and Agency was revised to require that loan closing must take place within six months of loan approval or else funds will be deobligated. The rationale for this change is that the Agency has had numerous cases where projects are not closed for years. This nonuse of funds has had a negative effect on subsidy rates for the program and does not meet the intent of the program.

In § 4274.330(c) loan terms between the intermediary and Agency are clarified to indicate that in the fourth year after loan closing, the loan will fully amortize, and that “full amortization” means principal and interest payments are due based on the total outstanding amount of the loan and not just on the amount drawn down and advanced to ultimate recipients. There has been past confusion on this issue, so the Agency is providing the necessary clarification in this update. All documents representing an interest in a participation loan made under § 4274.320 were added at § 4274.330(e)(2) to the list of documents that must be assignable.

*IRP Revolving Loan Fund Loan Conditions and Terms (§ 4274.331, formerly § 4274.320 and § 4274.325)*

In § 4274.331(a)(1) the Agency clarifies IRP revolving loan fund loan conditions and terms between the intermediary and ultimate recipients. This section provides the needed clarification that interest rates are negotiated between the two parties and that rates must be the lowest rates sufficient to cover the loan’s proportional share of the fund debt service reserve and administrative costs.

*Post Award Requirements (§ 4274.332)*

Intermediaries can contract personnel for hire; however, § 4274.332(b)(2)

prohibits contracting of essential activities, such as loan underwriting, or day-to-day operations.

In § 4274.332(b)(3) language was revised to use “debt service reserve” in lieu of “bad debt reserve.” The revised term clarifies that funds may be used to ensure that adequate cash is available for the annual IRP loan installment(s) in the event that the IRP revolving loan fund has insufficient cash to make these payments. Some intermediaries interpreted “bad debt reserve” as available only to payoff bad debts; thus, there was needed clarification on the definition and term. Additional language was added that prohibits Agency IRP funds or funds from an encumbered source from being used to fund this account.

In § 4274.332(b)(5) language was clarified that an intermediary cannot use funds for any investments in securities, or certificates of deposit over a 30-day duration. Certificates of deposit often come with penalties for withdrawals outside of a pre-determined period of time. IRP is not designed for investment of proceeds and therefore such a financial tool does not meet the intent of the program.

#### *Loan Agreements (§ 4274.333)*

In § 4274.333(a)(4)(i) and (ii) the Agency addresses the provisions for late charges on the intermediary loan by the Agency. There has been a disconnect in communication with borrowers on late fee assessments and interest calculations. Language was added here to notify readers that in the event of late fees being charged, that a notice will be sent to the intermediary identifying the per diem amount until the account becomes current. Guidance further explains that interest will be calculated on a 365-day basis unless otherwise stated in legal documents.

#### *Audit Opinion (§ 4274.333, formerly in § 4274.338)*

In § 4274.333(b)(4)(i)(A) the Agency removed the requirement for an unqualified audit opinion. Unlike an adverse opinion, the reason for the issuance of a qualified

opinion generally has no impact on the fair presentation of the financial information provided; therefore, the Agency has determined that the blanket restriction on qualified opinions was placing an undue burden on applicants.

*The Disbursement Procedure (§ 4274.333, formerly § 4274.338)*

Disbursement Procedures have been relocated from § 4274.338 to § 4274.333(a)(5) and have been updated to include current funds disbursement procedures. The Agency believes these procedures better provide the appropriate balance between safeguarding taxpayer funds and allowing the intermediaries to operate their funds according to their standards and practices.

*Applications (§ 4274.340, formerly § 4274.343)*

Application requirements have been moved from § 4274.343 in the prior regulation to § 4274.340. This section was changed in format and layout to be consistent with other RBCS programs. In addition, necessary forms are indicated as well as an indication for where other online guidance can be found. Additional guidance on contracted personnel was added at § 4274.340(a)(1)((ii)(A) through (C) to reinforce that contract personnel are for interim expertise and should only be used on an "as needed" basis.

*Processing applications for loans (§ 4274.341, formerly § 4274.343)*

Section 4274.341 (formerly § 4274.343) was updated to clarify that applications are received on an ongoing basis but will compete for funds on a quarterly basis for available funds based on a priority score ranking. This section also modifies the priority scoring criteria to address current economic and community development demographics and program conditions, resulting in maximum utilization of the loan fund awards by addressing critical community and small business financing needs. The Agency is revising the scoring requirements found in this section as follows:

First. The scoring criteria, for base points, is being realigned to reduce

redundancy and focus on items that best ensure program dollars are targeted to communities the IRP was designed to assist. To ensure more equitable priority scoring, separate scoring criteria for initial applications and existing intermediaries seeking funds to replenish their revolving loan funds were created. Expanded scoring thresholds for equity contributions to the revolving loan fund are included. Due to the removal of the intermediary service area restriction, the Agency added a criterion regarding the makeup of the governing board of the organization. The Agency provided clarification on the median household income calculation used in scoring and reiterated that the source of unemployment information was the Department of Labor. To better prioritize projects, two new criteria were added. The first provides points if greater than 50 percent of the service area is experiencing trauma due to a natural disaster, and the second is for loan requests of \$750,000 or less.

Second. Under the prior regulation, the leveraging criteria was calculated on three levels which caused confusion and inconsistencies in scoring projects and thereby affected whether the most noteworthy applicants were funded. The updated rule will only evaluate intermediary contributions toward ultimate recipient total project costs from its equity contributions to the IRP revolving loan fund. To incentivize the change, increased points will be awarded if the intermediary's equity contribution to an ultimate recipient project is 50 percent or more of the project costs from 15 points to 25 points. An intermediary's equity contribution must be loaned out prior to, or on a pro rata basis, with Agency IRP loan funds.

Third. The scoresheet is being automated to remove repetitive criteria, reduce errors in mathematical calculations and include the Administrator points criteria. The Administrator points scoring was modified to two criteria, versus six criteria in the prior regulation. This change significantly reduces the subjective nature that can arise in awarding points and allows for a more objective process that is based purely on hard

facts. As such, the number of Administrator points that can be awarded is reduced from 35 points to a maximum 10 points. The overall combined scoresheet is more user-friendly, cleanly outlined and complies with Department requirements to automate forms.

*Letter of Conditions (§ 4274.345, formerly § 4274.350)*

There is minimum change to this section and the Agency has clarified that there are separate Agency forms, one for each of the Letter of Conditions, Letter of Intent to Meet Conditions and Request for Obligation of Funds, that must be completed by the intermediary. The Agency has also clarified that any changes to the letter of conditions proposed by the intermediary must be approved in writing by the Agency prior to finalization and approval of the letter of conditions.

*Loan Closing (§ 4274.346, formerly § 4274.356)*

The format and layout of the loan closing documents, and process has been adjusted to be consistent with other RBCS programs.

*Loan Approval and Obligating Funds (§ 4274.351)*

The format and layout have been adjusted to be consistent with other RBCS programs. The Request for Obligation of Funds was previously mentioned as administrative text and was needed, but the regulation now clarifies that the form is required.

*Loan Documentation for Ultimate Recipients (§ 4274.352, formerly § 4274.361)*

Section 4274.352(b) was added to provide information on loans made by the intermediary with revolved funds as there has been confusion among Agency staff and intermediaries on the process and information required.

**Executive Orders and Other Certifications**

*Executive Order 12866 and 13563*

This final rule has been determined to be non-significant for purposes of Executive Order (EO) 12866 and 13563 and therefore has not been reviewed by the

Office of Management and Budget (OMB).

*Assistance Listing Assistance Listing (formerly known as Catalog of Federal Domestic Assistance)*

The assistance listing number for the program impacted by this action is 10.767, Intermediary Relending Program. All active assistance listing programs and the assistance listing catalog can be found at the following web site: <https://sam.gov/>. The website also contains a PDF file version of the catalog that, when printed, has the same layout as the printed document that the Government Publishing Office (GPO) provides. GPO prints and sells the assistance listing to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at (202) 512–1800 or toll free at (866) 512–1800, or access GPO’s online bookstore at <https://bookstore.gpo.gov>.

*Executive Order 12372*

This Program is not subject to the provisions of EO 12372, which requires intergovernmental consultation with State and local officials.

*Executive Order 12988*

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RBCS has determined that this rule meets the applicable standards provided in § 3 of the Executive Order. Additionally, (1) all State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect to the Executive Order will be given to the rule; and (3) administrative appeal procedures, if any, must be exhausted before litigation against the Department or its agencies may be initiated, in accordance with the regulations of the National Appeals Division of USDA at 7 CFR part 11.

*Executive Order 13132, Federalism*

The policies contained in this rule do not have any substantial direct effect on

States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with States is not required.

#### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) the undersigned has determined and certified by signature of this document that this rule, while affecting small entities, will not have an adverse economic impact on small entities. This rule does not impose any significant new requirements on program recipients, nor does it adversely impact proposed real estate transactions involving program recipients as the buyers.

#### *National Environmental Policy Act/Environmental Impact Statement*

This final rule has been reviewed in accordance with 7 CFR part 1970 “Environmental Policies and Procedures.” Rural Development has determined that this action was analyzed and meets the criteria established in 7 CFR 1970.53(f) and does not have any extraordinary circumstances and the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

#### *Unfunded Mandates Reform Act*

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments, or the private sector. Thus, this rule is not subject to the requirements of §§ 202 and 205 of the UMRA.

#### *E-Government Act Compliance*

Rural Development is committed to complying with the E-Government Act, to provide increased opportunities for citizens to access Government information and services electronically to the maximum extent possible.



### *Civil Rights Impact Analysis*

Rural Development has reviewed this rule in accordance with USDA Regulation 4300-4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. Based on the review and analysis of the rule and available data, application submission, and eligibility criteria, issuance of this Final Rule is not likely to adversely nor disproportionately impact low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their race, color, national origin, sex, age, disability, or marital or familial status.

### *Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

### *Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This final rule has been designated as non-significant by OMB under Executive Order 12866. The promulgation of this regulation will not have a significant effect on energy supply, distribution, or use.

### *Executive Order 13175, Consultation and Coordination with Indian Tribal Governments*

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of

power and responsibilities between the Federal Government and Indian tribes.

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian tribes and concluded that this rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes. OTR has determined that tribal consultation under EO 13175 is not required at this time. If consultation is requested, OTR will work with RD to ensure quality consultation is provided.

#### *USDA Non-Discrimination Policy*

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained

online at <https://www.ocio.usda.gov/document/ad-3027>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

- (1) Mail: U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410; or
- (2) Fax: (833) 256-1665 or (202) 690-7442; or
- (3) Email: [program.intake@usda.gov](mailto:program.intake@usda.gov)

#### *Information Collection and Recordkeeping Requirements*

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection activities associated with this rule are covered under OMB Number: 0570–0063. This final rule contains no new reporting or recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995.

#### **List of Subjects for 7 CFR Part 4274**

Community development, Loan programs-business, Reporting and recordkeeping requirements, Rural areas

For the reasons set forth in the preamble, 7 CFR part 4274 is amended as follows:

## **PART 4274 – DIRECT AND INSURED LOANMAKING**

1. The authority citation for part 4274 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989.

2. Subpart D is revised to read as follows:

### **Subpart D – Intermediary Relending Program (IRP)**

#### **Sec.**

4274.301 Introduction.

4274.302 Definitions.

4274.303 Review or appeal rights.

4274.304 Exception authority.

4274.305 Other regulatory requirements.

4274.306 - 4274.309 [Reserved]

4274.310 Eligibility requirements – intermediary.

4274.311 Eligibility requirements – ultimate recipients.

4274.312 – 4274.319 [Reserved]

4274.320 Loan purposes.

4274.321 Ineligible loan purposes.

4274.322 - 4274.329 [Reserved]

4274.330 Agency IRP loan conditions and terms.

4274.331 IRP revolving loan fund loan conditions and terms.

4274.332 Post award requirements.

4274.333 - Loan agreements between the Agency and the intermediary.

4274.334 - 4274.339 [Reserved]

4274.340 Application content and submittal.

4274.341 Processing applications for loans.

4274.342 - 4274.344 [Reserved]

4274.345 Letter of conditions.

4274.346 Agency IRP loan closing.

4274.347 - 4274.350 [Reserved]

4274.351 Loan approval and obligating funds.

4274.352 Loan documentation for ultimate recipients.

4274.353 - 4274.359 [Reserved]

### **Subpart D – Intermediary Relending Program (IRP)**

#### **§ 4274.301 Introduction.**

(a) This subpart contains regulations for loans made by the Agency to eligible intermediaries. This applies to borrowers, ultimate recipients and other parties involved in making such loans. The provisions of this subpart supersede conflicting provisions of any other subpart. All complete applications received before **[INSERT DATE OF**

**PUBLICATION IN THE FEDERAL REGISTER]** will be processed, awarded, and serviced in accordance with the existing regulatory provisions in effect at the complete application date for the program under which the application was submitted. An intermediary borrower may use the Agency-prescribed self-election template, available at the USDA Rural Development Website under “Details” in the RBCS IRP program section to have its existing loans, and any loans approved under the previous regulation but not yet closed, serviced under these provisions.

(b) The purpose of the program is to alleviate poverty and increase economic activity and employment in rural communities, especially disadvantaged and remote communities in partnership with other public and private resources, and in accordance with State and regional strategy based on identified community needs. This purpose is achieved through loans made to intermediaries that establish a revolving loan fund for the purpose of providing loans to ultimate recipients to promote community development, establish new businesses, establish and support microlending programs, and create or retain employment opportunities in rural areas.

(c) Intermediaries are required to identify any known relationship or association with an Agency employee. Any processing or servicing Agency activity conducted pursuant to this subpart involving authorized assistance to Agency employees, members of their families, close relatives, or business or close personal associates, is subject to the provisions of 7 CFR part 1900, subpart D.

(d) Copies of all forms, regulations, and Agency procedures referenced in this subpart are available at USDA Rural Development’s website under the “Resources” section, in the Rural Development National Office, or any Agency State Office.

#### **§ 4274.302 Definitions.**

The following definitions are applicable to the terms used in this subpart.

*Administrator.* The Administrator of the Rural Business-Cooperative Service within the Rural Development mission area of the U.S. Department of Agriculture (USDA).

*Affiliate.* Affiliate means individuals and entities are affiliates of each other when:

(1) One controls or has the power to control the other, or a third party or parties controls or has the power to control both. Factors such as ownership, management, current and previous relationships with or ties to another concern, and contractual relationships, shall be considered in determining whether affiliation exists. It does not matter whether control is exercised, so long as the power to control exists. Concerns owned and controlled by Indian Tribes, Alaska Native Corporations (ANC), Native Hawaiian Organizations (NHO), Community Development Corporations (CDC), or wholly-owned entities of Indian Tribes, ANCs, NHOs, or CDCs, are not considered to be affiliated with other concerns owned by these entities because of their common ownership or common management.

(2) There is an identity of interest between immediate family with identical or substantially identical business or economic interests (such as where the immediate family operate concerns in the same or similar industry in the same geographic area); however, an individual or entity may rebut that determination with evidence showing that the interests deemed to be one are in fact separate.

*Agency.* The Rural Business-Cooperative Service (RBCS) that has the responsibility to administer the Intermediary Relending Program (IRP).

*Agency IRP loan.* An IRP loan from the Agency to an intermediary with established terms and evidenced by a loan agreement and promissory note between parties.

*Agency IRP loan funds.* Cash proceeds of an Agency IRP loan received by an intermediary are considered Agency IRP loan funds.

*Agricultural production or agriculture production.* The cultivation, growing, or harvesting of plants and crops (including farming) breeding, raising, feeding, or housing of livestock (including ranching); forestry products, hydroponics, or nursery stock; or aquaculture.

*Aquaculture.* The commercial cultivation of aquatic animals and plants in natural or controlled marine or freshwater environments.

*Citizen.* An individual who is a citizen of the United States or resides in any State in the United States after being legally admitted for permanent residence.

*Community development.* Advancing livable and vibrant communities through coordinated approaches to economic, environmental, and human development by means of comprehensive business-based technical and financial assistance.

*Conflict of interest.* A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially, or there is a real or perceived benefit from engaging in certain projects or transactions. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, their immediate family members, partners, or an organization which is about to employ any of the parties indicated herein, having a financial or other interest in or tangible personal benefit from the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members and as stated in § 4274.321(b)(4).

*Cooperative.* An entity that is legally chartered by a State in which it operates as a cooperatively-operated business, or an entity that is not legally chartered as a cooperative but is owned and operated for the benefit of its members, with the return of residual

earnings paid to such members on the basis of patronage.

*Hydroponics.* The commercial cultivation of plants by placing the roots in liquid nutrient solutions rather than in soil.

*Immediate family.* Individuals who live in the same household or who are closely related by blood, marriage, or adoption, such as a spouse, domestic partner, parent, child, stepchild, sibling, aunt, uncle, grandparent, grandchild, niece, nephew, or first cousin.

*Indian tribe.* The term as defined in 25 U.S.C. 5304(e); any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Intermediary.* The entity requesting or receiving, as applicable, Agency IRP loan funds for establishing or recapitalizing an IRP revolving loan fund and relending to ultimate recipients.

*Intermediary equity contribution.* Represents an intermediary's investment in the IRP revolving loan fund, in the form of cash and unencumbered ownership in an amount determined by the applicant. This must be contributed to the IRP revolving loan fund prior to, or concurrently to, the disbursement of Agency IRP loan funds from the Agency. This contribution becomes restricted and must remain as equity in the IRP revolving loan fund subject to the provisions of §§ 4274.332(d) and 4274.341(b)(1) and (2).

*IRP revolving loan fund.* A group of assets:

- (1) Obtained through or related to an Agency IRP loan; and
- (2) Accounted for, along with related liabilities, revenues, and expenses, as an entity or enterprise separate from the intermediary's other assets and financial activities.

*Loan agreement.* The agreement, which utilizes the requisite OMB-approved



form, between the Agency and the intermediary setting forth the terms and conditions of the Agency IRP loan.

*Military personnel.* Individuals currently on active duty in the regular service, having enlisted from civilian or Reserve Officers' Training Corps status, or individuals on active duty in the regular service with more than six months until their anticipated date of release from service.

*Principals of intermediary.* Members, officers, directors, and other individuals or entities directly involved in the operation and management, including those setting policy, of an intermediary.

*Public agency.* Any State, Indian Tribal or local government, or any branch or agency of such government having authority to act on behalf of that government, to borrow funds and engage in activities eligible for funding under this subpart.

*Revolved funds.* The cash portion of an IRP revolving loan fund that includes fees, principal, and interest payments received from ultimate recipients and is not composed of any Agency IRP loan funds.

*Rural or rural area.* Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, and which excludes certain populations pursuant to 7 U.S.C. 1991(a)(13)(H), according to the latest decennial census of the United States and not in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants. In making this determination, the Agency will use the latest decennial census of the United States. The following exclusions apply:

(1) Any area in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants that has been determined to be "rural in character" as follows:

(i) The determination that an area is "rural in character" will be made by the Under Secretary of Rural Development. The process to request a determination under this

provision is outlined in paragraph (1)(ii) of this definition. The determination that an area is “rural in character” under this definition will apply to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within 1/4 mile of a rural area.

(ii) Units of local government may petition the Under Secretary of Rural Development for a “rural in character” designation by submitting a petition to the appropriate Rural Development State Director for recommendation to the Administrator on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (1)(i)(A) or (B) of this definition and discuss why the petitioner believes the area is “rural in character,” including, but not limited to, the area’s population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable governor or leader in a similar position and request comments to be submitted within five business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Rural Development State Office website and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration. The Under Secretary will make a determination of the appeal in not less than 15 days, but no more than 30 days.

(iii) Rural Development State Directors may also initiate a request to the Under Secretary to determine if an area is “rural in character.” A written recommendation should be sent to the Administrator, on behalf of the Under Secretary, that documents how the area meets the statutory requirements of paragraph (1)(i)(B) of this definition and discusses why the State Director believes the area is “rural in character,” including, but not limited to, the area’s population density, demographics, topography, and how the local economy is tied to a rural economic base. Upon receipt of such a request, the Administrator will review the request for compliance with the “rural in character” provisions and make a recommendation to the Under Secretary. Provided a favorable determination is made, the Under Secretary will consult with the applicable Governor and request comments within 10 business days, unless gubernatorial comments were submitted with the request. A public notice will be published by the State Office in accordance with paragraph (1)(ii) of this definition. There is no appeal process for requests made on the initiative of the State Director.

(2) An area that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than two census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is located in a rural area under this provision.

(3) For the Commonwealth of Puerto Rico, the island is considered rural and eligible except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. Areas within CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be Rural if they are not urban in character.

(4) For the State of Hawaii, all areas within the State are considered rural and eligible except for the Honolulu CDP within the County of Honolulu and any other CDP

with greater than 50,000 inhabitants. Areas within CDPs with greater than 50,000 inhabitants, other than the Honolulu CDP, may be determined to be Rural if they are not urban in character.

(5) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

*State.* Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

*Technical assistance.* A function performed for the benefit of an ultimate recipient, or proposed ultimate recipient, that is a problem-solving activity that assists the ultimate recipient in selecting, initiating, or completing a project. The Agency will determine whether a specific activity qualifies as technical assistance.

*Ultimate recipient.* An entity or individual that receives a loan from an intermediary's IRP revolving loan fund.

*Underrepresented group.* U.S. citizens with identifiable common characteristics, (including, but not limited to, racial and ethnic minorities, disabled and/or gender) that have not received IRP assistance or have received a lower percentage of total IRP dollars than the percentage they represent of the general population.

*Value-added agricultural product.* Any agricultural commodity that meets the requirements specified here. The agricultural commodity must meet one of the following value-added methodologies:

- (1) Has undergone a change in physical state;
- (2) Is a source of farm or ranch-based renewable energy; or
- (3) Is aggregated and marketed as a locally produced agricultural food product.

*Work plan.* A narrative provided by the intermediary that demonstrates the feasibility of the intermediary and its lending program to meet the objectives of the IRP program, including a set of goals, strategies, anticipated outcomes, and well-developed targeting criteria for assisting eligible ultimate recipients.

**§ 4274.303 Review or appeal rights.**

An intermediary may have appeal or review rights for adverse Agency decisions made under this part. Agency decisions that are adverse to the individual participant are appealable, while matters of general applicability are not subject to appeal; however, such decisions are reviewable for appealability by the National Appeals Division (NAD). All appeals will be conducted by NAD and will be handled in accordance with 7 CFR part 11.

**§ 4274.304 Exception authority.**

The Administrator may, on a case-by-case basis, grant an exception to any requirement or provision of this subpart provided that such an exception is in the best financial interests of the Federal government. Exercise of this authority cannot be in conflict with applicable law.

**§ 4274.305 Other regulatory requirements.**

(a) *Intergovernmental consultation.* The approval of an Agency IRP loan to an intermediary is subject to intergovernmental consultation in accordance with Executive Order 12372. For ultimate recipients located in States where the State has elected to review the program under the intergovernmental review process, in accordance with Executive Order 12372, the intermediary and ultimate recipient must submit a notification in the form of a project description to the State single point of contact. The intermediary must include any comments from the State with the intermediary's request to use the Agency IRP loan funds for the ultimate recipient. Prior to the Agency's decision on the request, the ultimate recipient must demonstrate compliance with the

requirements of intergovernmental consultation. These requirements are set forth in 2 CFR part 415, subpart C, General Program Administrative Regulations.

(b) *Environmental requirements.* The requirements of 7 CFR part 1970 apply to this subpart. Intermediaries and ultimate recipients must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans in order to minimize the potential to adversely impact the environment. Both the intermediaries and the ultimate recipients must cooperate and furnish such information and assistance as the Agency needs to make any of its environmental determinations.

(1) All IRP loans between the Agency and the intermediary are considered categorical exclusions absent the existence of extraordinary circumstances in accordance with 7 CFR part 1970. All intermediaries must execute an Exhibit H, "Multi-tier Action Environmental Compliance Agreement," to RD Instruction 1970-A as part of their IRP application submitted to the Agency. The intermediary must sign a certification that they have National Environmental Policy Act (NEPA) staff capable of undertaking an environmental review that meets Agency standards. For intermediaries that don't have capable staff, the Agency will deliver sufficient training to intermediaries on the environmental process and how to determine whether an ultimate recipient project is a categorical exclusion or requires an environmental assessment and review.

(2) For each proposed loan from an intermediary to an ultimate recipient using Agency IRP loan funds, an environmental review will be completed in accordance with 7 CFR 1970.55. For projects that do not qualify for a categorical exclusion, or which may be subject to an extraordinary circumstance under 7 CFR 1970.52, the intermediary will refer the project to the Agency for review under 7 CFR part 1970, subpart C. The intermediary retains responsibility for providing sufficient information for the Agency to make an environmental determination, though Agency staff may also opt to complete the

environmental review with information provided by either the intermediary or ultimate recipient.

(3) The Agency will prepare an environmental impact statement for any application for a loan from Agency IRP loan funds determined to have a significant adverse effect on the quality of the human environment.

(c) *Equal opportunity and nondiscrimination requirements.* In accordance with Title V of Public Law 93-495, the Equal Credit Opportunity Act, and section 504 of the Rehabilitation Act for Federally Conducted Programs and Activities, neither the intermediary nor the Agency will discriminate against any employee, intermediary, or proposed ultimate recipient on the basis of sex, marital status, race, color, religion, national origin, age, physical or mental disability (provided the intermediary or proposed ultimate recipient has the capacity to contract), because all or part of the intermediary's or proposed ultimate recipient's income is derived from public assistance of any kind, or because the intermediary or proposed ultimate recipient has in good faith exercised any right under the Consumer Credit Protection Act, with respect to any aspect of a credit transaction anytime any cash of the IRP revolving loan fund is involved.

(1) The civil rights compliance requirements contained in 7 CFR part 1901, subpart E, apply to intermediaries and ultimate recipients.

(2) The Agency will ensure that equal opportunity and nondiscrimination requirements are met in accordance with the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, "Nondiscrimination in Federally Assisted Programs," 42 U.S.C. 2000d-4, § 504 of the Rehabilitation Act for Federally Conducted Programs and Activities, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1990 (as amended).

(d) *Seismic safety of new building construction.* The IRP is subject to the provisions of Executive Order 12699, which require each Federal agency assisting in the

financing, through Federal grants or loans, or guaranteeing the financing, through loan or mortgage insurance programs, of newly constructed buildings to assure appropriate consideration of seismic safety.

(1) All new buildings financed from the IRP revolving loan fund, whether directly or through participations, must be designed and constructed in accordance with the seismic provisions of the most current version of the International Building Code (IBC) or two versions prior; currently that is 2021 IBC, 2018 IBC or 2015 IBC, or an above-code seismic standard that meets or exceeds the equivalent level of safety to that contained in the latest edition of the National Earthquake Hazard Reduction Programs (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Building (NEHRP Provisions.)

(2) The date, signature, and seal of a registered architect or engineer and the identification and date of the model building code on the plans and specifications constitutes evidence of compliance with the seismic requirements of the appropriate code.

**§ 4274.306 - § 4274.309 [Reserved]**

**§ 4274.310 Eligibility requirements — intermediaries.**

To be eligible to receive an Agency IRP loan, an intermediary must comply with the requirements specified in paragraphs (a) through (i) of this section.

(a) *Type of entity.* The intermediary must be one of the following types of entities:

- (1) A private nonprofit corporation;
- (2) A public agency;
- (3) An Indian Tribe; or
- (4) A cooperative.

(b) *Legal authority.* The intermediary must have the legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security for, and repaying the proposed loan. If the intermediary is an affiliate of another entity, the



intermediary's governing board must be independent of the affiliated entity.

(c) *Proven record.* The intermediary must have a proven lending record of successfully assisting rural business and industry or, for intermediaries that propose to finance community development, a proven lending record of successfully assisting rural community development projects of the type planned. The intermediary must have the capacity to conduct outreach and marketing, the underwriting of loan applications, and provide the servicing and monitoring of its proposed IRP portfolio.

(1) Except as provided in paragraph (c)(2) of this section, such record must include recent experience in loan making and servicing with loans that are similar in nature to those proposed by the intermediary and a delinquency and loss rate acceptable to the Agency. Any request for an exception must be specifically addressed in the loan application and be supported with concluding statements that relate to the items specified in paragraphs (c)(2)(i) and (ii) of this section.

(2) The Agency may approve an exception to the requirement for loan making and servicing experience provided the intermediary:

(i) Itself has a proven record of successfully assisting (other than through lending) rural business and industry or rural community development projects through technical assistance or business development projects to the type and size of planned ultimate recipient borrowers; and

(ii) Will, before the loan is closed, employ individuals with loan making and servicing experience and qualifications and expertise for the operation and administration of an IRP revolving loan fund as described in § 4274.340(a)(1)(ii). These shall not include contracted staff and staff from affiliates of the intermediary.

(d) *Staff.* The intermediary itself must employ a staff with loan making and servicing expertise acceptable to the Agency. The intermediary may contract for general services, such as, clerical, administrative, and accounting services, and loan packaging.

The intermediary may not routinely contract their lending outreach, loan underwriting, management, or day-to-day operations. Essential activities of a business lending operation and the administration of the IRP revolving loan fund must be conducted in-house.

(e) *Capitalization/equity*. The intermediary's balance sheet must have capitalization or equity acceptable to the Agency and deemed sufficient to sustain its lending and business operations.

(f) *Citizens*. At least 51 percent of the outstanding interest or membership in any nonpublic body intermediary must be composed of citizens.

(g) *Delinquent debt*. An intermediary is ineligible to receive an Agency IRP loan if the intermediary or any principal of the intermediary has any delinquent debt to the Federal government. Agency IRP loan funds cannot be used to satisfy the delinquent debt.

(h) *Conditions*. No loans will be extended to an intermediary unless:

(1) There is adequate assurance of repayment of the loan based on the fiscal and managerial capabilities of the intermediary itself; and

(2) The amount of the loan, together with other funds available, is adequate to ensure the continuation or establishment of an effective IRP revolving loan fund or achieve the purposes for which the loan is made.

(i) *Other financing unavailable*. The intermediary must be unable to finance the continuation or establishment of an effective IRP revolving loan fund from its own resources, or through commercial credit, or from other Federal, State, or local programs at reasonable rates and terms.

(j) *Restrictions*. Intermediaries established for the purpose of, or that predominantly use IRP loan funds for, the financial benefit of an affiliate through loan participations or other funding methods will not be allowed.

**§ 4274.311 Eligibility requirements — ultimate recipients.**

To be eligible for a loan from an intermediary under this subpart, an ultimate recipient must meet or comply with the requirements specified in paragraphs (a) through (g) of this section.

(a) *Type of entity.* The ultimate recipient must be a legal entity that can incur debt, including but not limited to, an individual; a public organization; a private organization; or other legal entity.

(b) *Legal authority.* The ultimate recipient must have the legal authority to incur the debt and carry out the purpose of the loan.

(c) *Citizens.* An individual ultimate recipient must be a citizen. In the case of an entity ultimate recipient, at least 51 percent of the outstanding membership or ownership of the entity must be citizens.

(d) *Location.* The ultimate recipient project must be located in an eligible rural area, although funds may also be used for community projects that predominantly serve rural residents of a State. Predominantly serves means more than 50 percent of the ultimate recipient's service is to rural residents of a State.

(e) *Other financing unavailable.* The ultimate recipient must be unable to finance the entirety of the proposed project from its own resources, or through commercial credit or from other Federal, State, or local programs at reasonable rates and terms.

(f) *Legal or financial influence.* (1) The intermediary and its principals (including immediate families) must hold no legal or financial interest or influence in or with the ultimate recipient as this is considered a conflict of interest, as defined. However, this paragraph does not prevent an intermediary that is organized as a cooperative from making a loan to one of its members per § 4274.321(b)(4) of this subpart.

(2) The ultimate recipient must, along with its principals (including their immediate families), hold no legal or financial interest or influence in or with the

intermediary as per § 4274.321(b)(4) as this is considered a conflict of interest, as defined.

(g) *Delinquent debt.* An ultimate recipient is ineligible to receive a loan from IRP loan funds if the ultimate recipient or any of its principals has any federal delinquent debt or is debarred from engaging in business with the Federal government. IRP loan funds may not be used to satisfy any Federal delinquent debt or used to make an otherwise ineligible ultimate recipient eligible for IRP loan funds.

(h) *Fund usage.* Ultimate recipients must demonstrate, to the Agency's satisfaction, that loan funds will remain in the United States and the facility being financed will primarily create new or save existing jobs for rural U.S. residents.

#### **§ 4274.312 - § 4274.319 [Reserved]**

#### **§ 4274.320 Loan purposes.**

(a) *Agency IRP loans.* The intermediary must deposit the Agency IRP loans into the intermediary's IRP revolving loan fund to provide loans directly to eligible ultimate recipients or in cooperation with banks and other lending organizations through loan participation agreements.

(b) *IRP revolving loan fund loans.* Ultimate recipients receiving loans from an IRP revolving loan fund must use those loans for business or community development projects and for projects that predominately serve communities and residents in rural areas.

(1) The Secretary may relend funds to eligible intermediaries for projects that:

- (i) Promote community development;
- (ii) Establish new businesses;
- (iii) Establish and support microlending programs; and
- (iv) Create or retain employment opportunities.

(2) Such loan purposes may include, but are not limited to, those purposes identified in paragraphs (b)(2)(i) through (xx) of this section.

(i) Business and industrial acquisitions when the loan will keep the business from closing, prevent the loss of employment opportunities, or provide expanded job opportunities.

(ii) Business construction, conversion, enlargement, repair, modernization, or development.

(iii) Purchase and development of land, easements, rights-of-way, buildings, facilities, leases, or materials.

(iv) Purchase of equipment, leasehold improvements, machinery, or supplies.

(v) Pollution control and abatement.

(vi) Transportation services.

(vii) Start-up operating costs and working capital.

(viii) Interest (including interest on interim financing) during the period before the facility becomes income producing, but not to exceed three years.

(ix) Feasibility studies.

(x) Debt refinancing.

(A) The intermediary is responsible for making prudent lending decisions based on sound underwriting principles when considering the restructuring of an ultimate recipient's debt.

(B) Refinancing debts may be allowed only when it is determined by the intermediary that the project is viable, and refinancing is necessary to create new or save existing jobs or create or continue a needed service.

(xi) Reasonable fees and charges to the ultimate recipient are allowed only as specifically listed in this paragraph. Authorized fees include loan documentation and fees for recording a collateral lien, environmental data collection fees, management consultant

fees, and other fees for services rendered by professionals in relation to the loan project. Professionals are generally persons licensed by States or accreditation associations, such as engineers, architects, lawyers, accountants, and appraisers. Additional charges to the ultimate recipient, whether by a fee or interest rate increase, for an intermediary's costs related to loan participations are not allowed. In addition, the intermediary shall not be charged fees related to the purchase or sale of a loan participation. The maximum amount of any fee will be what is reasonable and customary in the community or region where the project is located; provided, however, that all costs must be actual costs and shall not be marked-up beyond actual cost. Any such fees or charges are to be fully documented and justified.

(xii) Hotels, motels, tourist homes, bed and breakfast establishments, nonowner-occupied real estate, convention centers, and other tourist and recreational facilities except as prohibited by § 4274.321. These types of facilities are allowed when the pro rata value, supported by an analysis of the supporting real estate appraisal, of the owner's living quarters is deleted from the appraised value.

(xiii) Educational institutions.

(xiv) Revolving lines of credit provided the portion of the intermediary's total IRP revolving loan fund that is committed to, or in use for revolving lines of credit, will not exceed 25 percent at any time.

(A) All ultimate recipients receiving revolving lines of credit must reduce the outstanding balance of the revolving line of credit to zero at least once each year.

(B) The intermediary must approve all revolving lines of credit for a specific maximum amount and for a specific maximum time period, not to exceed two years.

(C) The intermediary must provide a detailed description, which will be incorporated into the intermediary's work plan and be subject to Agency approval, of how the revolving lines of credit will be operated and managed. The description must

include evidence that the intermediary has an adequate system for:

(1) Interest calculations on varying balances; and

(2) Monitoring and control of the ultimate recipients' cash, inventory, and accounts receivable.

(D) If, at any time, the Agency determines that an intermediary's operation of revolving lines of credit is causing excessive risk of loss for the intermediary or the government, the Agency may terminate the intermediary's authority to use the IRP revolving loan fund for revolving lines of credit. Such termination will be by written notice and will prevent the intermediary from approving any new lines of credit or extending any existing revolving lines of credit beyond the effective date of termination contained in the notice.

(xv) Aquaculture and hydroponics, as defined in this subpart.

(xvi) Commercial fishing.

(xvii) Commercial nurseries engaged in the production of ornamental plants and trees and other nursery products such as bulbs, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of plants from seed to the transplant stage.

(xviii) Forestry, which includes businesses primarily engaged in the commercial operation of timber tracts, tree farms, and forest nurseries and related activities such as reforestation.

(xix) Value-added production.

(xx) Housing, only when related to community development projects and, limited to working capital, equipment, pre-business development costs, and other such business purposes. Agency IRP loan funds may be used to assist a housing project planner, a housing project builder, a construction sub-contractor (indirect soft costs such as architectural, engineering and legal fees), or for any other business-related aspect of a housing project that is separate from the sale and/or purchase transaction involved in

transferring ownership of a single or multi-family dwelling. While the proceeds from a sale might be used by an ultimate recipient to repay an Agency IRP loan, an Agency IRP loan cannot be used to finance a residential housing purchase. Agency IRP loans may not be used to assist in the purchase of residential housing (single, multiple dwelling, etc.) as financial assistance moves outside of community development when the financial assistance (a mortgage loan) is requested for a purchase.

(c) *Participations.* (1) Loans made to eligible ultimate recipients by eligible intermediaries in cooperation with banks and other organizations through loan participation agreements shall be considered an eligible loan to an ultimate recipient for the purposes of this program. Loan participations are allowed in the IRP program, subject to the provisions of this regulation, with the intent to assist intermediaries in the management of their revolving loan fund, to meet the needs of larger ultimate recipient projects, and to promote cooperation in community projects where multiple lenders may be involved. In a participation, the lead (originating) bank retains a partial interest in the loan, holds all loan documentation in its own name, services the loan, and deals directly with the customer for the benefit of all participants. All loan participants share in the credit risk of the associated loan up to the amount of their participation.

(2) Loan participant buyers are able to compensate for low loan demand or invest in large loans without servicing burdens and origination costs. Lenders selling loan participations can accommodate a larger credit while mitigating some of the risk by reducing their credit exposure.

(3)(i) Participation agreements between the lead lender and buying participants are executed with each transaction and must address, among other items:

(A) The obligation of the lead lender to furnish timely credit information and to provide notification of material changes in the borrower's status;



(B) Requirements that the lead lender consult with participants and obtain their consent prior to modifying any loan, guaranty, or security agreements and before taking any action on defaulted loans; and

(C) The specific rights and remedies available to the lead and participating lenders upon default of the borrower.

(ii) A Master (open ended) participation agreement between the intermediary and any lender is not allowed. All loans made through use of participation agreements must be to eligible ultimate recipients and for eligible purposes. The ultimate recipients, lead lender and all participating lenders must agree to be bound by the applicable requirements of this regulation.

(4) Participation in loans where 50 percent or more of the loan funds are used to refinance a lead lender's existing loans to the borrower are ineligible. The Agency does not consider take out or terming out a construction loan as refinancing.

(5) No more than 50 percent of an intermediary's loan funds may be used to purchase loans from any individual lender or affiliation of lenders, to prevent an exclusive relationship with a lender or lender holding company. Likewise, no more than 50 percent of the total intermediary loans to ultimate recipients may be sold or participated to an individual lender or affiliation of lenders. An exception to these limits may be requested by the intermediary and is subject to review by the Agency of the intermediary's lending portfolio, credit quality and overall use of loan participations

**§ 4274.321 Ineligible loan purposes.**

(a) *Agency IRP loans.* The intermediary cannot use Agency IRP loan funds to pay for its administrative costs and expenses.

(b) *IRP revolving loan fund loans.* IRP revolving loan fund loans cannot be used for any of the purposes identified in paragraphs (b)(1) through (13) of this section.

(1) Assistance in excess of what is needed to accomplish the purpose of the

ultimate recipient's project.

(2) Distribution, payment, or loans to the owner, partners, shareholders, or beneficiaries of the ultimate recipient or members of their families when such persons will retain any portion of their equity, or control, in the ultimate recipient. This is not intended to prevent the sale of a business among immediate family members as long as the selling immediate family member does not retain an ownership interest and the price paid is deemed to be reasonable. This type of transaction is not an arm's length transaction and reasonableness of the price paid will be based upon an appraisal acceptable to the Agency.

(3) Charitable institutions and fraternal organizations that would not have revenue from sales, fees, or stable revenue source to support their operation and repay the loan.

(4) Assistance to Federal government employees, active-duty military personnel, employees of the intermediary, or any organization for which such persons are directors or officers or have 20 percent or more ownership.

(5) A loan to an ultimate recipient that has an application pending with or a loan outstanding from another intermediary involving an IRP revolving loan fund if the total Agency IRP loans would exceed the limits established in § 4274.331(c).

(6) Agricultural production. For the purposes of this program, Agricultural production does not include those activities specifically listed as eligible uses of IRP revolving loan fund loans in § 4274.320(b)(15) through (19).

(7) The transfer of ownership unless the loan will keep the business from closing, prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(8) Community antenna television services or facilities.

(9) Any illegal activity.

(10) Any project that is in violation of either a Federal, State, or local

environmental protection law or regulation or an enforceable land use restriction unless the assistance given will result in curing or removing the violation.

(11) Loans to lending and investment institutions and insurance companies.

(12) Golf courses, racetracks, or gambling facilities.

(13) An entity is ineligible if it derives more than 15 percent of its annual gross revenue (including any lease income from space or machines) from gambling activity, excluding State-authorized lottery proceeds or Tribal-authorized gambling proceeds, as approved by the Agency, conducted for the purpose of raising funds for the approved project.

#### **§ 4274.322 - § 4274.329 [Reserved]**

#### **§ 4274.330 Agency IRP loan conditions and terms.**

(a) *Revolving fund.* The intermediary must place Agency IRP loan funds in the intermediary's IRP revolving loan fund, and these funds must only be used to provide loans to eligible ultimate recipients per § 4274.320(a).

(b) *Loan closing.* Loan closing between the intermediary and the Agency must take place within six months of loan approval and obligation of funds, or funds will be forfeited, and the Agency will deobligate the loan.

(c) *Term.* The Agency IRP maximum loan term will be 30 years. Principal and interest payments will be scheduled at least annually. All Agency IRP loans will have interest-only payments scheduled for a maximum of the first three years following the loan closing. An intermediary may request a shorter interest-only period during the application process. All Agency IRP loans will automatically, fully amortize with principal and interest payments due in the fourth year on the anniversary of the closing date. The Agency IRP loan will fully amortize based on the total amount of the loan.

(d) *Interest rate.* The interest rate for an Agency IRP loan will be a fixed rate of one percent per annum over the term of the loan.

(e) *Security*. Security for all Agency IRP loans to intermediaries must ensure that the repayment of the loan is reasonably assured, when considered along with the intermediary's financial condition, work plan, and management ability. The intermediary is responsible for making loans to ultimate recipients in a manner that fully protects the interests of the intermediary and the Federal Government.

(1) Security for such loans may include, but is not limited to:

(i) Any realty, personalty, or intangible asset capable of being mortgaged, pledged, or otherwise encumbered by the intermediary in favor of the Agency; and

(ii) Any realty, personalty, or intangible asset capable of being mortgaged, pledged, or otherwise encumbered by an ultimate recipient in favor of the Agency.

(2) Initial security will consist of a pledge by the intermediary of all assets now in or hereafter placed in the IRP revolving loan fund, including cash and investments, notes receivable from ultimate recipients, and the intermediary's security interest in collateral pledged by ultimate recipients. Except for good cause shown, the Agency will not obtain assignments of specific assets at the time a loan is made to an intermediary or ultimate recipient. The intermediary must covenant that, in the event the intermediary's financial condition deteriorates or the intermediary takes action detrimental to prudent fund operation or fails to take action required of a prudent lender, the intermediary will provide additional security, execute any additional documents, and undertake any reasonable acts the Agency may request to protect the Federal Government interest or to perfect a security interest in any asset, including physical delivery of assets and specific assignments to the Agency. All debt instruments and collateral documents used by an intermediary in connection with loans to ultimate recipients, including all documents representing an interest in a participation loan made pursuant to § 4273.320 of this chapter, must be assignable.

(3) In addition to normal security documents, a first lien interest in the

intermediary's IRP revolving loan fund account(s) will be accomplished by a control agreement satisfactory to the Agency. Agency signatures for withdrawals are not required. The depository bank must waive its offset and recoupment rights against the depository account to the Agency and subordinate any liens it may have against the IRP depository bank account. The use of Form RD 402-1, "Deposit Agreement," or a similar form developed by the Agency's Office of the General Counsel is acceptable.

(f) *Loan limits.* (1) No loan to an intermediary will exceed the maximum amount the intermediary can reasonably be expected to lend to eligible ultimate recipients, in an effective and sound manner, within three years after loan closing. Only one Agency IRP loan will be approved by the Agency for an intermediary in any single fiscal year unless the additional request is from an IRP earmark that serves a different geographical area than the initial non-earmarked loan.

(2) The Agency IRP loan to an intermediary will not exceed the maximum award amount established by the Agency in an annual Notice.

(3) Intermediaries that have received one or more Agency IRP loans may apply for and be considered for additional Agency IRP loans provided that the outstanding loans of the intermediary's IRP revolving loan fund are generally sound, the intermediary is in compliance with all applicable regulations and its loan agreements with the Agency, and either:

(i) The intermediary has insufficient IRP revolving loan funds available for lending to meet current and expected ultimate recipient loan demand. Funds available for lending consist of Agency IRP loan funds not yet disbursed by the Agency, revolved funds, and cash on-hand in the IRP revolving loan fund. Necessary cash reserves including, but not limited to, debt service reserves, may be deducted from the IRP revolving loan fund cash on-hand in determining funds available for lending. The intermediary must provide documentation acceptable to the Agency of the current and

expected ultimate recipient loan demand; or

(ii) The Agency IRP loan will serve a geographic area not included in an area currently served by an existing IRP intermediary and it is not possible or feasible to expand the existing IRP loan's service area to include the new geographic area; and

(4) Total outstanding IRP indebtedness of an intermediary to the Agency will not exceed \$15 million at any time.

**§ 4274.331 IRP revolving loan fund loan conditions and terms.**

(a) *Conditions and terms.* Loan conditions and terms made by an intermediary to an ultimate recipient from the IRP revolving loan fund will be negotiated by the intermediary and ultimate recipient.

(1) *Interest rate.* The interest rate must be within limits established by the intermediary's work plan approved by the Agency. The rate must be the lowest rate sufficient to cover the loan's proportional share of the IRP revolving loan fund's debt service reserve and administrative costs.

(2) *Repayment.* The loan term must be reasonable and prudent considering the purpose of the loan, expected repayment ability of the ultimate recipient, and the useful life of collateral, and must be within any limits established by the intermediary's work plan approved by the Agency.

(b) *Security.* The intermediary is responsible for adherence to prudent lending practices when obtaining adequate security on each of its ultimate recipient loans.

(c) *Loan limits.* Loans from intermediaries to ultimate recipients using the IRP revolving loan fund must not exceed the limits in paragraphs (c)(1) and (2) of this section. In accordance with § 4274.321(b)(5), these loan limits apply to ultimate recipients cumulatively based on all existing and pending loans from one or multiple IRP intermediaries. The loan limits of ultimate recipient loans made from Agency IRP funds may be based on the total amount of the Agency IRP loans awarded. However, should

any portion of an intermediary's Agency IRP loan funds be de-obligated by the Agency, the ultimate recipient loan limit will thereafter be based on the actual amount of Agency IRP loan funds advanced to the intermediary and loaned out to ultimate recipients.

Intermediaries with multiple IRP loans that have combined those IRP funds in accordance with § 4274.332(b)(6) may base their ultimate recipient loan limits on the combined amount of Agency IRP loans. The maximum amount of an IRP Agency loan made by an intermediary to an ultimate recipient, whether directly or held through loan participation and including the balance of any existing ultimate recipient loans, shall be the lesser of:

(1) \$400,000; and

(2) Fifty percent of the originally-approved Agency IRP loan amount to an intermediary (including the unpaid balance of any existing ultimate recipient loans).

**§ 4274.332 Post award requirements.**

(a) *Applicability.* Intermediaries receiving loans under this program shall be governed by these regulations, the loan agreement, the approved work plan, security interests, and any other conditions which the Agency may impose in making a loan. Whenever this subpart imposes a requirement on loans made from the "IRP revolving loan fund," such requirement shall apply to all loans made by an intermediary to an ultimate recipient from the intermediary's IRP revolving fund for as long as any portion of the intermediary's IRP loan from the Agency remains unpaid. This includes revolved funds. Whenever this subpart imposes a requirement on loans made by intermediaries from "Agency IRP loan funds," without specific reference to the IRP revolving loan fund, such requirement shall apply only to loans made by an intermediary using Agency IRP loan funds and will not apply to loans made from revolved funds.

(b) *Maintenance of IRP revolving loan fund.* For as long as any part of an Agency IRP loan to an intermediary remains unpaid, the intermediary must maintain the IRP

revolving loan fund. All Agency IRP loan funds received by an intermediary must be deposited in an IRP revolving loan fund. The IRP revolving loan fund can only be used for receiving advances from the Agency, making payments to the Agency, disbursing ultimate recipient loans, and collecting ultimate recipient loan repayments. This includes transferred IRP revolving loan funds from another intermediary as a result of a transfer and assumption. Interest earned, cash obtained from fees assessed from activities of the IRP revolving loan fund, etc. must remain part of the IRP revolving loan fund though these monies may be used to pay administrative expenses as provided below. All Agency IRP loan activity must be managed through the IRP revolving loan fund. The intermediary may transfer additional assets into the IRP revolving loan fund to cover any shortage at any time. The intermediary must deposit all cash of the IRP revolving loan fund in a separate bank account or accounts. The intermediary is prohibited from commingling other funds of the intermediary with the funds in the IRP revolving loan fund. Intermediaries may use an operating account, general fund, or Automated Clearing House (ACH) account to initially collect payments from ultimate recipients, as long as those payments are transferred to the IRP revolving loan fund within 10 working days of receipt or by the end of the Federal fiscal quarter, whichever occurs first. All moneys deposited to the IRP revolving loan fund bank account or accounts must be money of the IRP revolving loan fund, and such accounts must be properly secured in accordance with § 4274.330(e). The receivables created by making loans to ultimate recipients, the intermediary's security interest in collateral pledged by ultimate recipients, collections on the receivables, interest, fees, and any other income or assets derived from the operation of the IRP revolving loan fund are a part of the IRP revolving loan fund.

(1) The intermediary can use the portion of the IRP revolving loan fund that consists of Agency IRP loan funds only for making loans in accordance with § 4274.320. The intermediary may use the portion of the IRP revolving loan fund that consists of



revolved funds for debt service reserve and reasonable administrative costs, in accordance with this section, or for making additional ultimate recipient loans.

(2) The intermediary must submit for Agency approval an annual budget of proposed IRP revolving loan fund income and expenses including expected administrative costs. The annual budget must itemize income, including interest received from ultimate recipients, interest earnings on deposits, fees, and other income excluding principal recaptured from ultimate recipients, and expenses including interest repaid to the Agency, administrative expenses, liquidation expenses, loan write-offs, and other fees and costs excluding principal repaid to the Agency. The intermediary cannot use proceeds received from the collection of principal repayment by an ultimate recipient for administrative expenses. The amount removed by the intermediary from the IRP revolving loan fund for administrative costs in any year must be reasonable, must not exceed the actual cost of operating the IRP revolving loan fund, including loan servicing, and providing technical assistance, and must not exceed the amount approved by the Agency in the intermediary's annual budget. The administrative expenses that the intermediary charges to the IRP fund may never exceed the actual income earned on an annual basis. An intermediary can contract personnel for hire per § 4274.340(a)(1)(ii); but the intermediary may not routinely contract loan underwriting, management, or day-to-day operations. Essential activities of the IRP revolving loan funds must be conducted in-house.

(3) The intermediary must establish a debt service reserve fund. The purpose of the debt service reserve fund is to ensure that adequate cash is available for the annual IRP loan installment(s) in the event that the IRP revolving loan fund has insufficient cash to make these payments. The minimum amount of cash in the debt service reserve fund must be at least equal to the intermediary's cumulative, annual debt service requirements for all Agency IRP loans outstanding. This account should be established by the date of

loan closing, but the minimum required cash balance does not have to be reached until the third anniversary of an Agency IRP loan closing. The minimum required balance must be maintained for the life of the Agency IRP loan thereafter. The debt service reserve funds can only be withdrawn when there is insufficient cash in the IRP revolving loan fund's other account(s) to make the annual Agency IRP loan installments, and such withdrawals require the prior written concurrence of the Agency. Any withdrawal that causes the cash balance to drop below the minimum amount required must be repaid to the debt service reserve fund as soon as possible, but in no event can such repayment be longer than six months from the date of withdrawal. The funding of this debt service reserve fund may not come from Agency IRP loan funds and must come from an unencumbered source.

(4) The intermediary must make any cash in the IRP revolving loan fund that is not needed for debt service or approved administrative costs available for additional loans to ultimate recipients. If the Agency determines that the intermediary has substantial amounts of Agency IRP loan funds available for lending that is not being regularly loaned out to ultimate recipients, the Agency may require, at its discretion, that those funds be returned to the Agency in accordance with paragraph (b)(8) of this section.

(5) The intermediary must deposit all reserves and other cash of the IRP revolving loan fund not immediately needed for loans to ultimate recipients or other authorized uses in accounts in banks or other financial institutions. Such accounts must be fully covered by Federal deposit insurance or fully collateralized with other securities in accordance with normal banking practices and all applicable State laws. The account must be interest-bearing if feasible and any interest earned thereon remains a part of the IRP revolving loan fund. The intermediary cannot use funds for any certificates of deposit over a 30-day duration or for investments in securities. All instruments associated with

the revolving loan fund must be liquid and not impose fees associated with the withdrawal or movement of cash.

(6) If an intermediary receives more than one IRP loan, the intermediary does not need to establish and maintain a separate IRP revolving loan fund for each loan. Instead, the intermediary may combine them and maintain only one IRP revolving loan fund, unless the Agency requires separate IRP revolving loan funds because there are significant differences in the loan purposes, work plans, loan agreements, or requirements for the loans. The Agency may allow loans with different requirements to be combined into one IRP revolving loan fund if the intermediary agrees in writing to operate the combined revolving funds in accordance with the most stringent requirements of the Agency. The combining of multiple loans in one IRP revolving loan fund does not preclude the intermediary from being able to individually track the activity of each Agency IRP loan. The Agency must be able to readily determine the ultimate recipient loans made from each Agency IRP loan.

(7) The intermediary may deposit their full equity contribution for the entire Agency IRP loan before the initial advance of Agency IRP loan funds or it may deposit its matching percent at each interval that loan advances are made by the Agency.

(8) IRP revolving loan fund funds are intended to be active mechanisms to enhance business development in rural communities. If Agency IRP loan funds have been unused for a period of six months or more, those funds in excess of \$250,000 will be returned to the Agency unless the Agency concurs with an intermediary's request for an exception. Any exception would be based on evidence satisfactory to the Agency that every effort is being made by the intermediary to utilize the IRP revolving loan fund funding for loans to ultimate recipients in conformance with program objectives.

(9) The full measure of collateral must be made up of cash available in the IRP revolving loan fund, the debt service reserve, and the total outstanding balance of

ultimate recipient loans. At all times, the sum of the IRP revolving loan fund, debt service reserve, and principal amount outstanding on performing ultimate recipient loans must equal 100 percent of what is owed to the Agency by the intermediary plus any equity contribution amount. Therefore, if any part of the collateral fluctuates to the extent that the minimum retention requirement falls below the 100 percent plus the equity contribution threshold, the intermediary must inject cash into the IRP revolving loan fund and or debt service reserve fund to ensure that the total collateral is maintained at the minimum required level.

(10) The intermediary must also file a Uniform Commercial Code (UCC) financing statement at closing in order to perfect the Agency's security interest in the ultimate recipient's promissory notes. The intermediary is responsible for covering the costs of filing as well as ensuring the necessary filings are renewed and recorded with the Secretary of State, or the equivalent tribal official as appropriate.

(c) *Agency oversight.* The Agency will monitor each intermediary based on progress reports submitted by the intermediary, audit findings, disbursement transactions, visitations, and other contact with the intermediary as necessary. The Agency will send written notices on payments coming due to the intermediary approximately 15 days in advance of the payment due date.

(d) *Return of equity.* An intermediary with an IRP loan(s) where the cash portion of the IRP revolving loan fund includes fees, principal and interest payments received from ultimate recipients and is not composed of any original Agency IRP loan funds, may annually request a partial or full return of their contributed equity under the following conditions:

(1) The intermediary is current in all payments to the Agency and in compliance with all elements of their loan agreement and Agency reporting requirements;

(2) The ratio of intermediary equity to the Agency loan after the return of equity remains consistent with the initial equity injection percentage by the intermediary; and

(3) Any return of an intermediary's equity from the revolving loan fund must be approved by the Agency in writing and is limited to an amount that the Agency determines will not cause additional credit risk to the revolving loan fund or the Agency and is in compliance with paragraph (b)(9) of this section.

**§ 4274.333 Loan agreements between the Agency and the intermediary.**

The intermediary and the Agency must execute a loan agreement or a supplement to a previous loan agreement at loan closing for each Agency IRP loan. The Agency will prepare the loan agreement and the intermediary must review it prior to loan closing. The intermediary is responsible for compliance with the terms and conditions of the loan agreement.

(a) The loan agreement will, at a minimum, set out:

(1) The amount of the loan;

(2) The interest rate;

(3) The term and repayment schedule;

(4) The provisions for late charges. The intermediary must pay a late charge of four percent of the payment due if payment is not received within 15 calendar days following the due date. The Agency will consider the late charge as unpaid if it is not received within 30 calendar days of the missed due date for which it was imposed. The Agency will add any unpaid late charge to the loan's principal balance, and it will be due as an extra payment at the end of the term. Acceptance of a late charge by the Agency does not constitute a waiver of default.

(i) A per diem amount will be shown on the late notice sent to the intermediary.

The Agency will continue sending notices to the intermediary on the late payments or any

further payments until the account is in a current status.

(ii) Interest will be computed on a 365-day basis unless legal documents state otherwise.

(5) The disbursement procedure. The Agency will disburse the Agency IRP loan funds to the intermediary on an as-needed basis after the loan agreement and promissory note are executed, and after any other conditions precedent to disbursement of funds are fully satisfied. Fund disbursement requests must be submitted with an intermediary's request for Agency concurrence in accordance with the provisions of § 4274.352(a). Only the amount of Agency IRP loan funds necessary to fund the given ultimate recipient loan request(s) can be requested by the intermediary and disbursed by the Agency. The intermediary's equity contribution may not be used for administrative costs. When lending, the intermediary's equity contribution must be loaned out prior to or on a pro rata basis with Agency IRP loan funds. For purposes of computing interest, the date of each draw down of an Agency IRP loan constitutes the date the funds are advanced under the loan agreement.

(6) The provisions regarding default. On the occurrence of any event of default (monetary or nonmonetary), the Agency may declare all or any portion of the debt and interest to be immediately due and payable and may proceed to enforce its rights under the loan agreement or any other instruments securing or relating to the loan and in accordance with the applicable laws and regulations. Any of the following may be regarded as an "event of default" at the sole discretion of the Agency:

(i) Failure of the intermediary to carry out the specific activities in its loan application as approved by the Agency or failure to comply with the loan terms and conditions of the loan agreement, any applicable Federal or State laws, or with such USDA or Agency regulations as may be applicable; or

(ii) Failure of the intermediary to pay within 15 calendar days of its due date any

installment of principal or interest on its promissory note to the Agency; or

(iii) The occurrence of:

(A) The intermediary becoming insolvent, or ceasing, being unable, or admitting in writing its inability to pay its debts as they mature, or making a general assignment for the benefit of, or entering into any composition or arrangement with creditors; or

(B) Proceedings for the appointment of a receiver, trustee, or liquidator of the intermediary, in whole or of a substantial part of its assets, being authorized or instituted by or against it; or

(iv) Submission or making of any report, statement, warranty, or representation by the intermediary or agent on its behalf to the Agency in connection with the financial assistance awarded hereunder which is false, incomplete, or incorrect in any material respect; or

(v) Failure of the intermediary to remedy any material adverse change in its financial or other condition (such as the representational character of its board of directors, loan making or policymaking body) arising since the date of the Agency's award of assistance hereunder, which condition was an inducement to the Agency's original award.

(7) Insurance requirements.

(i) Hazard insurance with a standard mortgage clause naming the intermediary as beneficiary will be required by the intermediary on every ultimate recipient's project funded from the IRP revolving loan fund in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the security. The intermediary's interest in the insurance will be

assigned to the Agency, upon the Agency's request, in the event of default by the intermediary.

(ii) Workmen's compensation insurance on ultimate recipients is required in accordance with State law.

(iii) The intermediary is responsible for determining if an ultimate recipient funded from the IRP revolving loan fund is located in a special flood or mudslide hazard area. If the ultimate recipient is in a flood or mudslide area, then flood or mudslide insurance must be provided in accordance with 7 CFR part 1806, subpart B.

(iv) Intermediaries must provide fidelity bond coverage, or employee dishonesty insurance, for all persons who have access to intermediary funds. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees and officials.

(A) The minimum amount of fidelity bond/employee dishonesty coverage required by the Agency will equal the total, cumulative annual debt service requirements for all Agency IRP loans. Intermediaries with fidelity bond/employee dishonesty coverage requirements through other Agency programs (e.g., the Rural Microentrepreneur Assistance Program) must add the coverage requirements of those programs to the coverage requirements of this section in calculating the minimum coverage amount.

(B) Evidence of this coverage must be provided at, or prior to, loan closing and must be maintained for the life of the IRP loan. During the term of the loan, the intermediary must provide evidence to the Agency, upon request, that adequate fidelity bond/employee dishonesty coverage is in place.

(v) The Agency may also require the intermediary to carry other appropriate insurance, such as coverage for public liability, leasehold, and property damage.

(b) The intermediary must agree in the loan documents to:



(1) Not make any changes in the intermediary's articles of incorporation, charter, or by-laws that would impact the intermediary's eligibility for the IRP program or would adversely affect their ability to operate the IRP program in accordance with the provisions of this instruction and any other applicable laws, regulations, and executive orders without the prior written concurrence of the Agency. This pertains to the Agency's original IRP loan funds and revolved funds.

(2) Not make a loan commitment to an ultimate recipient to be funded from Agency IRP loan funds without first receiving the Agency's written concurrence;

(3) Maintain a separate ledger and segregated accounting for the IRP revolving loan fund;

(4) Provide to the Agency:

(i) An annual audit as described in 2 CFR part 200, subpart F, or any successor regulation;

(A) The financial audit report period may be different than the IRP reporting periods. Intermediaries must promptly provide the auditor with the records and documentation necessary for the completion of the audit following the end of the audit period. The audit report must be submitted to the Agency within the earlier of 30 calendar days after receipt of the auditor's report, or nine months after the end of the audit period as described in 2 CFR 200.512. Audits must cover all the intermediary's activities. Audits will be performed by an independent certified public accountant. An acceptable audit will be performed in accordance with Generally Accepted Government Auditing Standards (GAAP) and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the intermediary. Compilations or reviews do not satisfy the audit requirement.

(B) It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws or for other purposes. To

the extent feasible, the audit work should be done in connection with these audits.

Intermediaries covered by 2 CFR part 200, subpart F, as codified in 2 CFR 400.1, should submit audits conducted in accordance with that regulation.

(ii) Quarterly or semiannual reports (due 30 days after the end of the period);

(A) Reports will be required quarterly during the first year after loan closing and, if all loan funds are not utilized during the first year, quarterly reports will be continued until at least 90 percent of the Agency IRP loan funds have been loaned out to ultimate recipients. Thereafter, reports will be required semiannually. Also, the Agency may require quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its work plan or loan agreement, or the Agency determines that the intermediary's IRP revolving loan fund is not adequately protected by the current sound worth and paying capacity of the ultimate recipients.

(B) These reports must contain information only on the IRP revolving loan fund.

Information required to be included in these reports as well as detailed reporting instructions will be provided by the Agency through a revolving loan fund user manual (available on the USDA Rural Development Intermediary Relending Program website) or similar documentation, which may be amended from time to time;

(iii) Annual proposed budget for the following year that meets the requirements of § 4274.360(b)(2); and

(iv) Other reports as the Agency may require from time to time;

(5) Before the initial lending of Agency IRP loan funds to an ultimate recipient, to obtain written Agency approval of all forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments. If the intermediary plans to sell participations in its loans made to ultimate recipients, the loan participation agreement and any planned interest rate spread or associated fees must be

submitted to the Agency for review and concurrence;

(6) To obtain written approval of the Agency before making any significant changes in forms, security policy, or the work plan. The servicing officer may approve changes in forms, security policy, IRP revolving loan fund plan, or work plans at any time upon a written request from the intermediary and determination by the Agency that the change will not jeopardize repayment of the loan or violate any requirement of this subpart or other Agency regulations. The intermediary must comply with the work plan approved by the Agency so long as any portion of the intermediary's IRP loan is outstanding.

(7) To secure the indebtedness by pledging the IRP revolving loan fund, including all of its loans derived from the proceeds of the Agency loan award, and pledging its real and personal property and other rights and interests as the Agency may require;

(8) In the event the intermediary's financial condition deteriorates or the intermediary takes action detrimental to prudent fund operation or fails to take action required of a prudent lender, to provide additional security, execute any additional documents, and undertake any reasonable acts the Agency may request, to protect the agency's interest or to perfect a security interest in any assets, including physical delivery of assets and specific assignments; and

(9) Funds not disbursed to the intermediary by the end of the 36<sup>th</sup> month of the IRP loan from the Agency will be deobligated and not available for disbursement to the intermediary.

(10) For revolved funds, the intermediary is responsible for continuing compliance with the terms and conditions of the loan agreement until the Agency loan is fully satisfied and repaid.

**§ 4274.334 - § 4274.339 [Reserved]**

**§ 4274.340 Application content and submittal.**

Intermediaries seeking to participate in the IRP program must submit an application in accordance with paragraph (a) of this section. Intermediaries applying for a subsequent Agency IRP loan may instead submit a streamlined application in accordance with paragraph (b) of this section. All intermediaries must submit their applications as provided in paragraph (c) of this section.

(a) *Intermediary application content.* A complete application will include forms as requested in the intermediary application checklist guide available on the USDA Rural Development Intermediary Relending Program website plus information identified in paragraphs (a)(1) through (12) of this section.

(1) A work plan/narrative that demonstrates the feasibility of the intermediary's program to meet the objectives of this program. The work plan must include, at a minimum:

(i) A copy of the intermediary's policy and/or procedural manuals to assure the Agency that its mission and goals align with that of the Agency (i.e., economic development, promoting rural America, regional and community development.)

(ii) Document the intermediary staff's ability in administering an IRP revolving loan fund. This includes but is not limited to providing a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. Their qualifications should detail their experience in loan making, loan monitoring, and loan servicing including liquidations. The personnel may be either members or employees of the intermediary's organization or on an as-needed basis and as allowed by this regulation, contracted personnel.

(A) Contract personnel may be used to train, develop, or supervise the intermediary's members or employees or to provide interim expertise while the intermediary develops relevant in-house experience. The intermediary may contract for

general services, such as clerical, administrative, and accounting services, and loan packaging.

(B) The intermediary cannot use contract personnel for the primary functions of its lending program, such as credit analysis and loan underwriting. The intermediary is expected to make an independent lending decision for each ultimate recipient loan request.

(1) The contract between the intermediary and the person or entity providing such service must be submitted for Agency review.

(2) The terms of the contract and its duration must be sufficient to develop in-house expertise and to ensure the Agency loan is adequately serviced throughout its term. The contract must provide for termination at the request of the Agency whether or not for cause.

(C) If the Agency determines the intermediary's personnel lack the necessary expertise to administer the program, the loan request will not be approved;

(iii) Demonstrate a need for loan funds. At a minimum, the intermediary must either positively identify a sufficient number of proposed and known ultimate recipients it has on hand to justify the level of Agency funding of its loan request, or include well developed targeting criteria for ultimate recipients consistent with the intermediary's mission and strategy for the IRP, along with supporting statistical or narrative evidence that such prospective recipients exist in sufficient numbers to justify Agency funding of the loan request;

(iv) Provide a set of goals, strategies, and anticipated outcomes for the intermediary's program. Outcomes should be expressed in quantitative or observable terms (e.g., jobs created for low-income area residents or self-empowerment opportunities funded) and should relate to the purpose of IRP (*see* § 4274.301(b)); and

(v) Provide specific information as to whether and how the intermediary will

ensure that technical assistance is made available to ultimate recipients and potential ultimate recipients. Describe the qualifications of the technical assistance providers, the nature of technical assistance that will be available, and expected and committed sources of funding for technical assistance. If other than the intermediary itself, describe the organizations providing such assistance and the arrangements between such organizations and the intermediary.

(2) Demonstrate the sustainability of the IRP revolving loan fund by providing a pro forma balance sheet at start-up and projected balance sheets for at least three additional years including the accumulated debt service reserve; financial statements for the last three years, or from inception of the operations of the intermediary if less than three years; and projected cash flow and earnings statements for at least three years supported by a list of assumptions showing the basis for the projections. The projected earnings statement and balance sheet must include one set of projections that shows the IRP revolving loan fund only and a separate set of projections that shows the intermediary organization's total operations. Also, if principal repayment on the IRP loan will not be scheduled during the first three years, the projections for the IRP revolving loan fund must extend to include at least one year with a full annual installment on the IRP loan.

(3) Provide documentation of any funds pledged and intermediary equity contribution that will be contributed into the IRP revolving loan fund to serve as security for the IRP loan and to pay for part of the cost of the ultimate recipient projects. Pledged funds and intermediary equity contribution must be in the form of cash and cannot be in-kind contributions; they also cannot be used as intermediary operating funds.

(4) A written agreement of the intermediary to abide with the Agency audit requirements.

(5) Complete organizational documents including: Articles of Incorporation

(initial loan only), Bylaws, Certificate of Good Standing, a list of board members with contact and lending experience information, and evidence of authority to conduct the proposed lending activities (this could be satisfied with a statement from the intermediary's counsel).

(6) Document the intermediary's ability to commit financial resources under the control of the intermediary to the establishment of an IRP program. This should include a statement of the sources of non-Agency funds for administration of the intermediary's operations and financial assistance for projects.

(7) Demonstrate to Agency satisfaction that the intermediary has secured commitments of significant financial support from public agencies and private organizations.

(8) Provide evidence to Agency satisfaction that the intermediary has a proven record of obtaining private or philanthropic funds for the operation of similar programs to the IRP.

(9) Latest audit report, if available.

(10) The IRP revolving loan fund plan is a separate stand-alone document from the application and may be revised in the future. The IRP revolving loan fund plan governs the use of the RLF and must be developed by the intermediary and approved by the Agency. The plan must include a detailed explanation of the intermediary's fund administration policies and procedures in addition to planned fund use after the original IRP loan funds in the RLF have revolved. Fund administration policies and procedures must also include information regarding the review and approval of loans from the fund, including participation loans. The revolving loan fund plan must be of sufficient and detailed information to provide the Agency with a complete understanding of what the intermediary will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will get from the intermediary to the ultimate

recipient, including participation loans. The IRP revolving loan fund plan must contain:

(i) The specific service area of the IRP fund including names of counties and or cities within the service area;

(ii) Borrower eligibility criteria, loan purposes, loan priorities, fees, rates, terms, loan limits and collateral requirements;

(iii) Details on the intermediary's application review and approval process;

(iv) Details on the method of disposition of funds to the ultimate recipient, monitoring of the ultimate recipient's accomplishments, the reporting requirements by the ultimate recipient's management; and

(v) A copy of the intermediary's ultimate recipient loan application package and sample loan documents (*i.e.*, application forms, debt instruments, collateral and security documents, etc.).

(11) Credit Elsewhere Certification (*see* Agency template available at the USDA Rural Development Intermediary Relending Program website).

(12) Prior to applying for program funding, a resolution by the intermediary's board of directors is required. At a minimum, the executive director of the intermediary must make the organization's board of directors aware of the possibility that the organization may be entering into a significant debt.

(b) *Streamlined applications.* Intermediaries that have an active Agency IRP loan may submit a streamlined application that includes the following:

(1) Submission of the information required under the Intermediary Guide (available at the USDA Rural Development Intermediary Relending Program website) and paragraphs (a)(1) through (4) of this section except that the information required by paragraph (a)(2) of this section may be limited to projections for the proposed new IRP revolving loan fund.

(2) A statement that the new loan would be operated in accordance with the work



plan on file for the previous IRP loan(s) may be submitted in lieu of a new work plan.

Any substantial change to an existing work plan would require the submission of a new work plan.

(3) Intermediaries that have received one or more Agency IRP loans may apply for and be considered for additional Agency IRP loans provided that the outstanding loans of the intermediary's IRP revolving loan fund are generally sound, the intermediary is in compliance with all applicable regulations and its loan agreements with the Agency, and the revolving loan fund's liabilities do not significantly exceed their assets. The intermediary must have a reasonable plan to disburse any unused IRP loan funds within six months of loan closing in addition to showing the need for additional IRP funds in accordance with paragraph (a)(1)(iii) of this section.

(c) *Application submittal.* Intermediaries must submit the complete application in one package. The intermediary must file its application with the Agency State Office in the State in which the intermediary's headquarters is located. An intermediary headquartered in the District of Columbia may file its application with the Delaware/Maryland Rural Development State Office, Attention: Business Programs 1221 College Park Drive, Suite 200 Dover, DE 19904.

#### **§ 4274.341 Processing applications for loans.**

(a) *Processing applications.* Applications are accepted in the Rural Development State Office on an ongoing basis. The Agency will review all applications received for eligibility and will score each application according to the criteria in paragraph (b) of this section. Eligible applications received by the Rural Development State Office by close of business on September 30, December 31, March 31, and June 30 of each year will compete based on score ranking for available funds with other applications in that Federal fiscal quarter. If the quarterly application deadline falls on a weekend or holiday, the application deadline will be the next business day. The Agency will rank all eligible,

scored applications each Federal fiscal quarter and will fund applications in the order of priority ranking using available funds for that quarter. The Agency will retain unsuccessful applications due to limited funding for consideration in subsequent reviews, through a total of four quarterly reviews.

(b) *Scoring.* The Agency will use a point system to determine an eligible applicant's priority ranking for available loan funds. Points will be awarded only for factors indicated by well documented, reasonable plans which, in the opinion of the Agency, provide assurance that the work plan items have a high probability of being accomplished. Application content must contain sufficient information to assess the applicant's ability to manage an IRP revolving loan fund and allow the Agency to assign priority points in accordance with the criteria discussed in this section. The Agency will award points using the criteria identified in paragraphs (b)(1) through (9) of this section. Any application that does not meet the minimum value for receiving points associated with a criterion will receive no points for that criterion.

(1) *Intermediary equity contribution for initial Agency IRP loan applications only (maximum 35 points).* The Agency will award points under this criterion if the applicant is applying for its first ever Agency IRP loan and will contribute cash matching funds to the IRP revolving loan fund. These funds must be deposited into the IRP account at closing and are subject to the same use restrictions as Agency IRP loan funds. These funds must be loaned out to ultimate recipients in conjunction with Agency IRP loan funds. The amount of cash matching funds contributed will be:

(i) At least 5 percent, but less than 10 percent of the requested loan amount – 10 points

(ii) At least 10 percent, but less than 20 percent of the requested loan amount – 15 points

(iii) At least 20 percent, but less than 30 percent of the requested loan amount –  
20 points

(iv) At least 30 percent, but less than 40 percent of the requested loan amount –  
25 points

(v) At least 40 percent, but less than 50 percent of the requested loan amount – 30  
points

(vi) More than 50 percent of the requested loan amount – 35 points

(2) *Intermediary equity contribution for subsequent Agency IRP loan applications only (maximum 35 points)*. The Agency will award points under this criterion if the applicant is applying for a subsequent IRP loan and will contribute cash matching funds to the IRP revolving loan fund. The Agency must determine that the applicant's performance under their current IRP loan(s) is satisfactory in accordance with § 4274.330(f)(3) in order to be eligible and receive points under this criterion. These funds must be deposited into the IRP account at closing and are subject to the same use restrictions as Agency IRP Funds and loaned out to ultimate recipients in conjunction with Agency IRP loan funds. Cash matching funds are not required of subsequent applicants, but points will be awarded if the amount of cash matching funds contributed will be:

(i) At least 5 percent, but less than 10 percent of the requested loan amount – 10  
points

(ii) At least 10 percent, but less than 20 percent of the requested loan amount – 15  
points

(iii) At least 20 percent, but less than 30 percent of the requested loan amount –  
20 points

(iv) At least 30 percent, but less than 40 percent of the requested loan amount –  
25 points

(v) At least 40 percent, but less than 50 percent of the requested loan amount – 30 points

(vi) More than 50 percent of the requested loan amount – 35 points

(3) *Community Representation (10 points)*. Governing board of directors where 50 percent or more of its members consist of business, banking, civic and community leaders that are representative of the rural communities within the service area(s) that intermediary serves. These board members are diversely spread across the service areas and represent at least 50 percent of the intermediary total service area. These board members are not employees of the intermediary. Statewide and national IRP lenders must have a board of directors with members that are also familiar with current economic conditions and the inherent credit risks of making and servicing loans outside of the intermediary's primary location to receive these points. Documentation in the workplan must address these qualifications.

(4) *Leveraging (maximum 25 points)*. The Agency will award points if the intermediary will limit the funding of ultimate recipient project loans with Agency IRP funds. IRP revolving loan fund funds that consist of revolved funds may also be used as leveraging. However, any projects funded must continue to comply with the loan agreement and requirements of this subpart so long as any part of the Agency IRP loan remains unpaid. The intermediary's equity contribution will be the following percentages of an ultimate recipient's total project costs:

(i) At least 10 percent, but less than 25 percent of the total project costs - 5 points will be awarded;

(ii) At least 25 percent, but less than 50 percent of the total project costs - 10 points will be awarded; or

(iii) Fifty percent or more of the total project costs - 25 points will be awarded.

(5) *Median household income (maximum 15 points)*. The Agency will award

points under this criterion based on the degree to which the median household income in the service area of the intermediary exceeds the poverty line for a family of four. For applicant intermediaries whose service area includes multiple locations or geographic areas, weighted averages based on the populations will be used in calculating the area's median household income. For median household income computations, applicant intermediaries will use income data from the latest decennial census of the United States, updated according to changes in the consumer price index as published annually by the Agency. The poverty line used will be as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), which will be published annually by the Agency. If the median household income in the intermediary's service area exceeds the poverty line for a family of four by:

- (i) At least 50 percent, but not more than 75 percent, 5 points will be awarded;
- (ii) At least 25 percent, but less than 50 percent, 10 points will be awarded; or
- (iii) Below 25 percent, 15 points will be awarded.

(6) *Unemployment (maximum 15 points)*. The Agency will award points under this criterion based on the extent to which the unemployment rate in the intermediary's service area exceeds the national unemployment rate. For unemployment computations, applicant intermediaries must use the unemployment data published by the Bureau of Labor Statistics, U.S. Department of Labor, for the most current month available at the time of application in comparison to the national unemployment rate for the same month. If the service area is a single city, town, or Indian Reservation and current, monthly unemployment data is not available for that city or town, the current, monthly unemployment rate for the county (or Indian Reservation) in which the service area is located should be used. For applicant intermediaries whose service area includes multiple locations or geographic areas, a weighted average based on the populations should be used in calculating the area's unemployment rate. If the unemployment rate in the

intermediary's service area is:

(i) Equal to, or less than 25 percent above the national unemployment rate, 5 points will be awarded;

(ii) At least 25 percent above, but less than 50 percent above the national unemployment rate, 10 points will be awarded; or

(iii) Fifty percent or more above the national unemployment rate, 15 points will be awarded.

(7) *Trauma (maximum 15 points)*. Under this criterion, the Agency will award 15 points if 50 percent or more of the intermediary's service area is experiencing trauma due to a major natural disaster, as declared by the Federal Emergency Management Agency (FEMA), that occurred not more than three years prior to the filing of the application for assistance. Intermediaries with proposed statewide and nationwide service areas do not qualify for these points.

(8) *Experience (maximum 30 points)*. The Agency will award points under this criterion based on the number of years the intermediary entity has in successfully making and servicing commercial loans. If the intermediary entity itself has actual experience in making and servicing commercial loans, with a successful record, for:

(i) At least 1 but less than 3 years, 5 points will be awarded;

(ii) At least 3 but less than 5 years, 10 points will be awarded;

(iii) At least 5 but less than 10 years, 20 points will be awarded; or

(iv) Ten or more years, 30 points will be awarded.

(9) *Size of loan request (maximum 20 points)*. The Agency will award points under this criterion based on the size of the intermediary's loan request. If the size of the loan request is:

(i) \$500,000 or less, 20 points will be awarded; or

(ii) Over \$500,000, and up to \$750,000, 10 points will be awarded

(10) *Administrator (maximum 10 points)*. The Administrator may award up to 10 additional points to an application to account for either or both of the items identified in below:

(i) The project meets the President/Secretary Initiative(s) (e.g., local foods, regional development, persistent poverty, energy-related, etc.); or

(ii) The applicant's service area will include areas not currently served by existing IRP Intermediaries. Statewide and nationwide Intermediaries will not be considered for Administrator points with regard to whether an area is currently covered by an existing IRP fund.

**§ 4274.342 - § 4274.344 [Reserved]**

**§ 4274.345 Letter of conditions.**

The Agency will provide the successful intermediary with a letter of conditions listing all requirements for the loan. Immediately after reviewing the conditions and requirements in the letter of conditions, the intermediary must complete, sign, and return the requisite forms provided by the Agency indicating the intermediary's intent to meet the conditions and the request of obligation of funds. If the intermediary identifies certain conditions that cannot be met, the intermediary may propose alternate conditions to the Agency. The Agency must approve in writing of any proposed changes made to the initially issued or proposed letter of conditions prior to acceptance and finalization

**§ 4274.346 Agency IRP loan closing.**

(a) At the time the Agency IRP loan is closed, the intermediary must certify to each condition identified in paragraphs (a)(1) through (5) of this section.

(1) No major changes have been made in the work plan except those approved in the interim by the Agency.

(2) All requirements of the letter of conditions have been met.

(3) There has been no material adverse change in the intermediary's financial

condition, nor any other material adverse change in the intermediary, for any reason, during the period of time from the Agency's loan approval to loan closing regardless of the cause or causes of the change and whether or not the change or causes of the change were within the intermediary's control. Any material adverse change must be explained by the intermediary. The Agency, at its sole discretion, will consider any such change and determine if it is significant enough to prevent the loan closing or disbursement of IRP loan funds to the intermediary.

(4) There are no claims or liens of laborers, materialmen, contractors, subcontractors, suppliers of machinery and equipment, or other parties pending against the security of the intermediary, and that no suits are pending or threatened that would adversely affect the security of the intermediary when the security instruments are filed.

(5) Certification that the intermediary has received Agency staff training on how to distinguish a required environmental review from a categorical exclusion in accordance with § 4274.305(b).

(b) The Agency will consider all requested changes submitted in writing to the Agency but will only approve changes that do not materially affect the IRP project, its capacity, employment, original projections, or credit factors.

#### **§ 4274.347 - § 4274.350 [Reserved]**

#### **§ 4274.351 Loan approval and obligating funds.**

(a) The loan will be considered approved on the date that the obligation of funds document (*Form RD 1940-1, Request for Obligation of Funds*), is signed by the Agency. Agency IRP loans not closed within six months of approval by the Agency will be deobligated and the loan funds will no longer be available to the intermediary.

(b) An obligation of funds established for an intermediary may be transferred by the Agency to a different (substituted) intermediary provided:

(1) The substituted intermediary is eligible to receive the assistance approved for



the original intermediary;

(2) The substituted intermediary bears a close and genuine relationship to the original intermediary; and

(3) The need for and scope of the project and the purposes for which Agency IRP loan funds will be used remain substantially unchanged.

**§ 4274.352 Loan documentation for ultimate recipients.**

(a) *Agency IRP loans.* Prior Agency concurrence is required when an intermediary makes loans to an ultimate recipient from its Agency IRP loan funds (this applies to each Agency IRP loan received). A request for Agency concurrence in approval of a proposed loan to an ultimate recipient, whether made directly or through a loan participation purchase, must contain or comply with, as appropriate, the items identified in paragraph

(b)(1) through (5) of this section and must include information listed in the IRP Revolving Loan Fund File Checklist, on the Agency website at the USDA Rural Development Intermediary Relending Program website:

(1) Certification by the intermediary that:

(i) The ultimate recipient is eligible for the loan;

(ii) The loan is for an eligible purpose;

(iii) Agency IRP loan funds are not more than 75 percent of the total project costs;

(iv) The loan complies with all applicable statutes and regulations;

(v) The ultimate recipient is unable to finance the proposed project through commercial credit or other Federal, State, or local programs at reasonable rates and terms; and

(vi) The intermediary and its principal officers (including immediate family) hold no legal or financial interest or influence in the ultimate recipient, and the ultimate recipient and its principal officers (including immediate family) hold no legal or financial interest or influence in the intermediary. The interest and influence of a cooperative

member when the intermediary is a cooperative is an allowable exception to this paragraph.

(2) A completed and executed request for environmental information on a form provided by the Agency for projects that meet the criteria for a NEPA review categorical exclusion, NEPA environmental assessment or NEPA environmental impact statement in accordance with § 4274.305(b)(2).

(3) All comments obtained in accordance with § 4274.305(a) regarding intergovernmental consultation (if required).

(4) Copies of sufficient material from the ultimate recipient's application and the intermediary's related files to allow the Agency to determine the:

(i) Name, address, DUNS number, Federal ID number, and North American Classification System (NAICS) Code of the ultimate recipient;

(ii) Loan purpose;

(iii) Interest rate and term;

(iv) Location, nature, and scope of the project being financed;

(v) Uses and sources of funds; and

(vi) Nature and lien priority of the collateral.

(5) Such other information as the Agency may request.

(b) *Revolved IRP loan funds.* An intermediary may use revolved funds to make loans to ultimate recipients in accordance with § 4274.320(b) without obtaining prior Agency concurrence as required in § 4274.352(a) and are also exempted from completion of items required by paragraphs (a)(2) and (3) of this section.

**§ 4274.353 - § 4274.359 [Reserved]**

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Karama Neal

Administrator

Rural Business-Cooperative Service

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